

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

A.B.S., et al.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:12-CV-202 JCH
)	
MAYOR FRANCIS SLAY, et al.)	
)	
Defendants.)	

**INTERVENOR PLAINTIFF ANNIE SMITH'S
MOTION FOR CONTINUANCE OF HEARING
AND MOTION TO COMPLETE DISCOVERY**

COMES NOW Intervenor Plaintiff Annie Smith (“Intervenor”), by and through her attorney, James W. Schottel, Jr., and hereby moves this Honorable Court to grant her Motion for Continuance of Hearing and, pursuant to Rule 26(b)(1) of the Federal Rules of Civil Procedure, Motion to Complete Discovery and states to this Court as follows:

1. Plaintiff A.B.S. (“Plaintiff”), filed this action through her Next Friend, Christina Wilson (“Wilson”), under 42 U.S.C. § 1983 and Missouri state law claim of wrongful death under Missouri Revised Statute § 537.080.
2. On June 25, 2013, an ADR Compliance Report was filed noting the parties had reached a settlement, “subject to court approval as Plaintiff (A.B.S.) is a minor.” (*See Doc. #57*).
3. Plaintiff A.B.S. has filed a motion seeking court approval of the settlement and seeking a hearing on apportionment of the settlement.
4. Plaintiff and Intervenor, do not dispute that the Missouri Wrongful Death Statutes govern the apportionment of the settlement.
5. Pursuant to RSMo. § 537.080, Plaintiff, the minor child of the decedent, and

Intervenor, the mother of the decedent, are both Class 1 Plaintiffs.

6. This Honorable Court has set this matter for hearing Plaintiff's motion seeking court approval of the settlement and seeking a hearing on apportionment of the settlement for Monday, July 15, 2013 at 10:30 a.m.

7. Intervenor's undersigned counsel has surgery scheduled for Friday, July 12, 2013 at 8:00 a.m. and will be unavailable for 2 weeks thereafter. (*See Intervenor's Exhibit 1 attached hereto*).

8. Additionally, Intervenor has sent a Notice to Take Deposition of Christina Wilson and Request to Produce Documents at the Deposition for Friday, July 26, 2013 at 1:30 p.m. (*See Intervenor's Exhibit 2 attached hereto*).

9. Plaintiff's motion seeking court approval of the settlement and seeking a hearing on apportionment of the settlement has requested that Plaintiff receive 100% of the settlement and Intervenor receive nothing.

10. Plaintiff's motion seeking court approval of the settlement and seeking a hearing on apportionment of the settlement has also alleged several material facts that are pertinent to the hearing set by the Court and the apportionment of the settlement.

11. Pursuant to Rule 26(b)(1) of the Federal Rules of Civil Procedure, Intervenor respectfully requests this Court to allow Plaintiff to complete discovery in taking Christina Wilson's deposition as she has material information pertinent to Intervenor's claim.

12. As a result of Plaintiff's condition and the scheduled deposition, Intervenor respectfully requests this Honorable Court to continue the hearing set for July 15, 2013 to a date after July 29, 2013.

13. No parties will be prejudiced by this short continuance requested by Intervenor.

WHEREFORE, for the foregoing reasons, Intervenor Plaintiff Annie Smith respectfully requests this Honorable Court to grant her Motion Continuance of Hearing and Motion to Complete Discovery and for such other and further relief this Honorable Court deems just and proper under the circumstances.

Respectfully submitted,

SCHOTTEL & ASSOCIATES, P.C.

BY: s/James W. Schottel, Jr.

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Attorney for Intervenor Plaintiff
Annie Smith

CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2013, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

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